LEONG SHU WENG

v.

TIAN KIM LOONG & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
ANUAR ZAINAL ABIDIN J
[CIVIL SUIT NO. C 7165 OF 1985]
31 MARCH 1989

CIVIL PROCEDURE: *Summons for direction - Struck out because of non-compliance - Appeal against striking out of writ - Whether appeal was misconceived.*

A summons for direction was fixed for hearing on 30 June 1988. Plaintiff Counsel did not attend because engaged in Magistrate Court. The case was adjourned to 6 September 1988 and plaintiff was requested to consider whether to transfer the case to Session Court or otherwise.

On 6 September 1988, plaintiff's Counsel was again absent because he had to attend a funeral. The learned Senior Assistant Registrar struck out the summons on the ground that the plaintiff's Counsel failed to comply with the direction given on 30 June 1988.

Plaintiff is now filing an application to extend the time for filing the notice of appeal against the decision of the Senior Assistant Registrar.

Held:
The appeal was misconceived and should not have been brought in the first place because the learned Senior Assistant Registrar only struck out the summons for direction and did not strike out the writ of summons as stated by the plaintiff.

[Appeal dismissed with costs.]

For the plaintiff/appellant - absent ; M/s. Lee, Perara & Tan
For the 1st defendant - Thurairaj; M/s. Syarikat K.L Rekhraj
For the 2nd defendant - Fiona Ghaus; M/s. Skrine & Co.

JUDGMENT

Anuar Zainal Abidin J:

This is an application by the plaintiff by way of summons-in-chambers for an order that time for filing the notice of appeal against the decision of the Senior Assistant Registrar given on 6 September 1988 be extended.

This application came up for hearing before me on 8 February 1989.

Both the Counsels for the 1st defendant and the 2nd defendant were present. The Counsel for the plaintiff was absent.

There was no reason given or intimated to the Court why the Counsel for the plaintiff was absent. In the event, the application (encl. 17) was dismissed with costs.

In any event, the application itself to my mind has no merit.

The facts briefly are as follows.

A summons for direction was fixed for hearing on 30 June 1988. On that date the Counsel for the plaintiff did not attend Court. He asked the Counsel for the defendants to appear and mention the case on his behalf. His reason for not attending Court was that he had to attend a hearing in a Magistrate's Court, a reason which to my mind is very flimsy.

The case was however adjourned by the learned Senior Assistant Registrar to 6 September 1988. The Senior Assistant Registrar required the plaintiff to consider whether to transfer this case to Sessions Court or otherwise.

On 6 September 1988 again the Counsel for the plaintiff was absent. On this occasion the learned Counsel had to attend a funeral. Again the Counsel for the defendants appeared before the learned Senior Assistant Registrar and mentioned the case on behalf of the plaintiff.

The learned Senior Assistant Registrar struck out the summons. According to the Counsel for the defendants who mentioned the case for the plaintiff it was struck out because the plaintiff had failed to comply with the direction given on 30 June 1988.

If I understand correctly what the learned Senior Assistant Registrar decided on 6 September 1988 was to strike out encl. (13) which is a summons for direction. The learned Senior Assistant Registrar did not strike out the writ of summons as stated by the plaintiff. The writ of summons was never struck out and as I can see it is still existing.

This appeal is therefore misconceived and should not have been brought in the first place.

In the event I would dismiss this appeal with costs.

Also found at [1989] 2 CLJ 450